

Chapter 15 - Modifications Procedures

Introduction

At some point during the progress of your award, your award agreement may require a modification. Possible reasons for requesting a modification are:

1. Change of award ending date;
2. Change in project activities, site or area;
3. Reallocation of funds budgeted between approved activities;
4. A change in the use of principal and interest payments received by the recipient;
5. A change in private sector participants, investment, or housing goals;
6. A change in any conditions listed in the Technical Corrections to your award agreement.

Modification requests are reviewed by the IHFA staff to determine if the recipient has proceeded in a timely and responsible manner, if the proposed modification presents new problems in meeting federal or state regulatory or policy requirements, or if the request in any way changes the review factors, including point awards, that initially led to funding. Where the proposed modification significantly alters the project from the original agreement, it may be advisable for the recipient to voluntarily return the award and reapply for funding when the project is solidified or when project obstacles have been overcome.

All modification requests submitted to IHFA need to be in a letter format and submitted with an original signature of the chief executive officer of the recipient.

There are two types of modifications: minor program modifications and major program modifications. If a modification request includes both major and minor changes, the modification request will be considered a major modification request for review purposes.

Note of Caution

When any modification is anticipated, the recipient must also consider the impact of the proposed modification on other regulatory requirements (e.g., a change in project location or participants may trigger a new environmental review). Recipients should carefully review the anticipated changes against all regulatory requirements to determine the full range of possible impacts including unanticipated expenses or even the possibility that the proposed project will no longer be eligible for funding. Additionally, a modification is not considered granted or denied until you receive a formal letter from IHFA outlining a response to your request.

Minor Program Modifications

A minor modification includes changes to the award including expiration date extensions and budget reallocations. If the recipient requests a minor program modification and no other

changes, the modification can be accomplished through an exchange of letters between the recipient and IHFA.

When requesting a minor modification, a ***detailed justification*** must be included in the request. The chief executive officer of the recipient must sign the request. After reviewing the request, IHFA will respond in writing to request either approving or denying it.

When a modification is approved, IHFA will send the recipient two original contract modifications in the form of a letter signed by the Executive Director of IHFA. The recipient must sign both originals with one original returned to IHFA and the other placed in the recipient's project file.

90-day Rule Waiver

An easily overlooked modification is a request to waive the 90-day Rule. The 90-day Rule states all construction contracts, professional service contracts, and purchase agreements must be executed 90 calendar days prior to the date of award expiration. If a recipient cannot execute all of the contracts prior to this 90-day period, a waiver or modification is required.

Your request should include as much specific information as possible. Include what properties are affected by this rule and justify what events have caused a need for this waiver. Additionally, include in your request a timeline outlining the schedule to complete the affected properties by the award expiration date.

A waiver of the 90-day Rule is not an award extension. If an award extension is also needed, additionally submit the required information requesting an award extension. An award extension is not a waiver of the 90-day rule.

Award Extension

An important minor modification is a request for a change of the expiration date. If an award cannot be fully drawn by its stated date, a request for modification of expiration date must be submitted to IHFA, and a modified project schedule must be attached. Since funds cannot be drawn after award expiration, it is recommended that modification requests be submitted well in advance of the expiration date.

Changes in award expiration dates are **NOT** automatic. In signing the award agreement, the recipient has certified that the project can be completed within the time period specified. The recipient has not fulfilled its contractual obligations when award funds are not expended within the time frame specified in the award agreement. In addition, IHFA is required by HUD to meet certain performance standards for expenditure of funds. As a result, it is the policy of IHFA to permit changes in award expiration dates only when the recipient can demonstrate that:

- a) It could not have reasonably foreseen the delays; ***and***
- b) It acted responsibly and in a timely manner to overcome the delays; ***and***
- c) It informed IHFA immediately upon learning that the project could not be completed within the time frame specified in the award agreement; ***and***

- d) All aspects of the project can be **completed** within a very short period of time after the original end date -- usually not to exceed six months.

In all other instances, it is recommended that the recipient voluntarily return the award and reapply for funding when the project is ready to proceed or, where possible, consult with IHFA to consider redesign of the project to allow earlier completion.

If you have determined that you would like to move forward with an extension to the expiration date, the modification request must include, but is not be limited to the following information:

- Explanation as to why the modification is needed;
- Detailed timeline by site address of what has transpired to date, please include all site addresses;
- Detailed timeline by site address for completion of the project; and
- Signed modification request from chief executive officer of the award recipient.

Budget Reallocation

When requesting a budget modification, the modification needs to include, but is not be limited to the following information:

- Explanation as to why the modification is needed;
- What lead to the change in the costs attributable to the line item, e.g. requesting money to be moved into rehabilitation – additional costs due to historic preservation of existing windows; and
- Revised Budget; and
- Signed modification request from chief executive officer of the award recipient.

Award Agreement Changes

When requesting an award agreement change, e.g. decreasing the number of units served or income beneficiary restrictions, the modification needs to include, but not limited to the following information:

- Explanation as to why you cannot fulfill the requirements that you stated in your initial application for funding;
- The steps taken to meet the original requirements;
- Explanation as to beneficiaries that you are planning to serve, number of units that you are planning to serve, etc.; and
- Signed modification request from chief executive officer of the award recipient.

Please note that if you are increasing the number of units that will be served, you do not need to request approval from IHFA; however, you are still bound to meeting the beneficiary restrictions that you stated in your initial application to IHFA.

Substantial Reconstruction

There are instances where “Substantial Rehabilitation” is insufficient. Improvements to the substandard house are either not enough to bring the house up to standards and make it structurally a safe living environment or the cost to rehabilitate the home may exceed the cost of simply replacing the home. While HOME regulations have allowed reconstruction, substantial reconstruction is generally prohibited under federal CDBG regulations, but the Indiana Housing Finance Authority can consider waivers to the prohibition only under certain conditions. The preferred method for undertaking substantial reconstruction, however, will continue to be through projects receiving HOME funding.

This policy summary addresses those rehabilitation projects where a determination must be made regarding the need and eligibility for substantial reconstruction of housing owned and occupied by low and moderate-income persons. IHFA will not consider increasing a CDBG award to make a substantial reconstruction project financially feasible. *PRIOR APPROVAL BY THE IHFA IS REQUIRED FOR ALL SUBSTANTIAL RECONSTRUCTION PROJECTS.*

For each request, the following definition applies and the following conditions must be met:

Substantial Reconstruction: Substantial reconstruction is defined to include the rebuilding of existing housing, on the same foundation or the same footprint, standing on a site at the time that owner eligibility is determined by the local unit of government. Rooms may be added outside the footprint of the housing being reconstructed in order to alleviate occupancy issues, but the reconstruction housing must essentially be similar to the original housing. Reconstruction also includes replacing an existing substandard unit with a new or standard unit of manufactured housing with the manufactured housing qualifying under the IHFA’s Manufactured Housing Policy and its six (6) criteria. Efforts must be made to assure that the replacement housing preserves the character of the structure replaced and the surrounding neighborhood. Housing must meet all applicable new construction building standards. *Substantial Reconstruction applies to owner occupied projects only.*

- A. Conditions: Substantial reconstruction waivers will be considered only in the following situation: The housing that is being reconstructed is part of a neighborhood rehabilitation effort in which the unit of local government is carrying out or proposes to carry out housing rehabilitation activities, and the housing to be reconstructed would otherwise be a part of the housing rehabilitation in that neighborhood, and the unit of local government determines:
- 1) that the housing to be reconstructed is unsuitable for rehabilitation. Housing that is unsuitable for rehabilitation is housing that is substandard and not financially or structurally feasible for rehabilitation. The recipient or its agents must document this determination. Such documentation should include inspection forms and cost estimates for rehabilitation and cost estimates for reconstruction which *demonstrates that the cost of substantial reconstruction is significantly less than the cost of rehabilitation*; and
 - 2) the *estimated cost of reconstruction is at least twenty percent (20%) less than the estimated cost of purchasing comparable newly constructed housing (including land) located in that neighborhood or in a comparable neighborhood of the unit of local*

government (for purposes of this paragraph, comparable newly constructed housing means a newly constructed residential structure of approximately the same size on a lot of approximately the same size); and

- 3) the *estimated cost of the reconstruction is less than the fair market value of the reconstructed housing and land* based on an appraisal obtained before reconstruction; and
- 4) the unit is located on land held by the beneficiary in fee-simple title or 99-year leasehold and is the principal residence of the beneficiary.
- 5) the property is subject to the resale restrictions or recapture provisions generally utilized for IHFA's HOME Investment Fund program (See Deed Restrictions Chapter).

Note: resale restrictions or recapture provisions must be recorded and are the only instruments to be used in protecting the public investment.

B. All requests for approval to undertake substantial reconstruction activities must include the following information:

- 1) Cost estimates for rehabilitating the existing structure.
- 2) Cost estimates for the reconstructed housing.
- 3) Estimate of cost to purchase comparable newly constructed housing in the same or comparable neighborhood.
- 4) A copy of the appraisal for the unit that is to be reconstructed.
- 5) Written justification of efforts to assure the preservation of character for the replacement housing along with photos of the existing structure, neighboring properties and blueprints and front elevations of the replacement structure.
- 6) A Budget Modification requesting to reallocate funds to the "Not Feasible For Rehab" line item.
- 7) A complete sources and uses of funds for the project address. Please specify the terms of any private financing involved in the project.
- 8) A certified abstract of title and attorney's opinion of title.
- 9) Beneficiaries of substantial reconstruction projects should, if financially able, participate in the financing of the project. If the beneficiaries' financial participation in the project is at least 50% of the project costs (as identified in items seven (7) above) then no further client information is required. Otherwise, the following information on the client must be submitted to the IHFA:
 - (a) Size of household.
 - (b) Annual income.
 - (c) Current mortgage amount.
 - (d) Total debts (not including mortgage).
 - (e) Estimated cost for taxes and insurance on reconstructed property.
 - (f) A list of any credit history problems (i.e., bankruptcy, pending lawsuits, loan defaults, etc.).
 - (g) Justification for beneficiary level of financial participation.

- C. All requests for waivers will be approved or denied in the discretion of the IHFA following a review and evaluation of the justifications listed in support of the waiver request and a review and evaluation of the current status of the request.

Major Program Modifications

A major modification is a substantial change in terms of the project purpose, scope, location, or beneficiaries. The recipient should allow a minimum of 30 days for approval when requesting a major modification.

Types of modifications that can result in major modifications are:

- a. Adding an additional activity to an existing award
- b. Changing from one eligible activity to another

CDBG Major Modification

When a CDBG recipient desires to request substantial changes in terms of the project purpose, scope, location, or beneficiaries, the recipient must provide citizens with reasonable advance notice of, and opportunity to comment on, activities which are proposed to be added, deleted, or substantially changed from the unit of general local government's application to the state. Before requesting a substantial modification from IHFA, the CDBG recipient must do one of the following:

- a. Hold a public hearing to obtain citizen's viewpoints. The recipient must publish a legal notice announcing the public hearing in a local newspaper of major circulation at least 10 calendar days prior to the public hearing date.
- b. Publish a legal notice in a local newspaper of major circulation specifying the proposed program change and providing citizens information for submitting comments to the proposed change. Citizens must be given at least 10 calendar days to comment on the proposed major modification before the request submitted to IHFA, and the recipient must respond to citizen comments within 15 working days where practicable.
- c. If the recipient determines that neither of the above options is feasible, the recipient may submit a request to their IHFA Compliance Specialist to utilize an alternative method of informing citizens of the proposed change.

IHFA must receive a letter requesting the major modification from the recipient's chief executive officer, a copy of the revised Project Budget (if applicable), a modified project schedule, and an original publisher's affidavit for the public notice.

HOME Major Modifications

When a HOME recipient requires a substantial modification, IHFA must receive a letter requesting the major modification from the recipient's chief executive officer, a copy of the revised Project Budget (if applicable), and a modified project schedule. Public participation is not required for the HOME Program.

Rent Limit Adjustments

Federal HOME regulations prohibit IHFA from making supplemental HOME awards during a HOME-funded developments' affordability period, unless the award is made within one year of project completion or the supplemental funding assists a homebuyer in acquiring housing previously assisted with HOME funds [see 24 CFR 92.214(a)(7)].

HUD states at 24 CFR 92.252(g) that changes in the rent limits over time should be sufficient to maintain the financial viability of a development. However, the regulations go on to say, "HUD may adjust the HOME rent limits for a project, only if HUD finds that an adjustment is necessary to support the continued financial viability of the project and only by an amount that HUD determines is necessary to maintain continued financial viability of the project. HUD expects that this authority will be used sparingly."

If award recipients find that the published rent limits are insufficient for a specific HOME-funded development, IHFA will consider a request to adjust the 40% or 30% AMI rent limits. For 60% or 50% units, we would forward the request to HUD on the recipient's behalf. In either case, the petitioner would be required to demonstrate how the increased rents would continue to be affordable for the targeted areas.

Effective Date of Modification

Unless otherwise communicated in writing to the recipient by IHFA, all modifications will become effective as of the date the modification agreement is signed by a signatory of IHFA.